

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS**

JOSE MARIA DeCASTRO,  
a/k/a CHILLE DeCASTRO,  
a/k/a DELETE LAWZ,

*Plaintiff and  
Defendant-in-Counterclaim*

v.

JOSHUA ABRAMS a/k/a  
ACCOUNTABILITY FOR ALL  
and KATE PETER a/k/a  
MASSHOLE TROLL MAFIA,

*Defendants and  
Plaintiffs-in-Counterclaim, and*

GOOGLE LLC,

*Defendant.*

Case No. 1:22-cv-11421-ADB

**DECLARATION OF RAQUEL SMALL IN SUPPORT OF DEFENDANT  
GOOGLE LLC'S MOTION AND MEMORANDUM OF REASONS  
TO TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA  
OR, IN THE ALTERNATIVE, TO DISMISS**

**DECLARATION OF RAQUEL SMALL**

I, Raquel Small, do state and declare as follows:

1. I am a Program Manager on the YouTube legal team. As part of my role, I have personal knowledge of YouTube's Terms of Service, including the facts described below, and, if called as a witness, could and would testify competently thereto.

2. YouTube offers an online video service where users around the world can share and watch videos and related content. With limited exceptions, YouTube is a free service and does not charge users to upload or view videos.

3. Use of YouTube's services is governed by a written Terms of Service Agreement ("TOS" or "Terms"). A true and accurate copy of the current TOS is attached hereto as **Exhibit A**. The TOS are also available at [www.youtube.com/t/terms](http://www.youtube.com/t/terms), on the sidebar of the YouTube homepage, [www.youtube.com](http://www.youtube.com), and elsewhere throughout the YouTube website. YouTube's TOS have been modified from time to time over the years.

4. The current version of the TOS, and all past versions of the TOS going back to February 2009, require that disputes between YouTube and its users arising out of their use of YouTube be litigated solely in Santa Clara County, California. The current version of the Terms provides as follows: "All claims arising out of or relating to these terms or the Service will be governed by California law, except California's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts." This exact language was included in the previous three versions of the TOS, and has been effective from December 10, 2019 to the present.

5. Because many millions of users from around the world use YouTube free of charge each day, the forum-selection clause is necessary to manage the costs of litigation and reduce the burden to YouTube of litigating all over the world.

6. The current version of the TOS, and all past versions of the TOS, provide that YouTube may modify the Terms over time. Modifications to the Terms only apply going

forward. The current version of the Terms provides as follows: “We may modify this Agreement, for example, to reflect changes to our Service or for legal, regulatory, or security reasons. YouTube will provide reasonable advance notice of any material modifications to this Agreement and the opportunity to review them, except that modifications addressing newly available features of the Service or modifications made for legal reasons may be effective immediately without notice. Modifications to this Agreement will only apply going forward. If you do not agree to the modified terms, you should remove any Content you have uploaded and discontinue your use of the Service.”

7. Users are able to post content to their own “channels”. In order to create a YouTube channel, users are required to accept the TOS. Currently, users are informed that “By tapping Create Channel you agree to YouTube’s Terms of Service.” The words “YouTube’s Terms of Service” appear in blue font and include a hyperlink to the TOS. Below, there is a blue button labeled “Create Channel.” By clicking “Create Channel,” users agree to abide by the TOS.

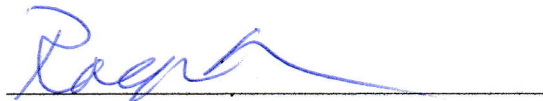
8. In addition, at all times relevant to Plaintiffs’ allegations, each time a user uploaded a video to YouTube from a desktop web browser, that user was required to click a button reaffirming their acceptance of and agreement to be bound by the TOS before the video would be posted to YouTube.

9. Based on a review of YouTube’s records pertaining to the channels created and videos uploaded by Jose DeCastro, the plaintiff in *Jose Maria DeCastro v. Joshua Abrams et al.*, 1:22-cv-11421-ADB (D. Mass.), he created a YouTube channel on July 28, 2020. YouTube’s records reflect that in doing so, he affirmatively clicked a button indicating his acceptance of and agreement to be bound by the TOS (which included his agreement to the pertinent forum-selection clause).

10. YouTube’s records further reflect that Jose DeCastro is a participant in the YouTube Partner Program, which provides for YouTube to pay him a portion of the revenue attributable to the videos he uploads to YouTube, conditioned on his agreement to the YouTube

Partner Program Terms. When he joined the program, he agreed to the YouTube Partner Program Terms, a true and correct copy of which is attached as **Exhibit B**. They state in part that “the YouTube Terms of Service . . . which may be updated from time to time and are incorporated herein by reference . . . appl[ies] to your participation in the YouTube Partner Program.” Ex. B at 1. They further state that “[t]he governing law and dispute resolution provisions of the YouTube Terms of Service will also apply to these Terms.” *Id.* at 2.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 22, 2023, in San Leandro, California.



Raquel Small

**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the District of Massachusetts CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated as non-registered participants.

Dated: May 23, 2023

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI  
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